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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,716

02/19/2004

Marc R. Bernard

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27498

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10/28/2005

PILLSBURY WINTHROP SHAW PITTMAN LLP

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EXAMINER

NGUYEN, HANH N

ART UNIT

PAPER NUMBER

2668

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/783,716	BERNARD ET AL	
	Examiner	Art Unit	
	Hanh Nguyen	2668	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed on 8/12/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 9 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



**HANH NGUYEN
PRIMARY EXAMINER**

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 10-28 are rejected under 35 USC 103(a) as being unpatentable over Carley (US Pat. 6,708,137 B2) in view of Song et al. (US Publication Number 2004/0196862 A1).

Regarding claims 1, 11, 12, 13, 14, 16, 19, 21, 23, 25 and 27, Examiner interpretes the claimed system time as a "time range" which has been described in the specification, page 8. Carley discloses the DCA 20 is located in passive optical network network 25 (col.9, lines 40-48). Carley discloses a method of data transfer (method shown in fig.1) comprising: transmitting to an ONU (transmitting to a data collection agent 20; Note, The DCA 20 is a device of Passive Optical Network 25, col.9, lines 40-60) an indication of a time relative to a current system time (a time range over which a measurement of network 25 is required, col.5, lines 42-50); receiving network data collected at the ONU and associated with the transmitted indication (the requested network performance data is collected at the DCA 20, stored in module 30, col.10, lines 24-35); and storing the received network data (storing the network performance data in module 30, col.10, lines 30-35). Carley does not disclose maintaining at the ONU one or more counters synchronized to the current system time.

Song et al. discloses, in fig.1, an OLT 100 assigns a transmission time to each ONU 110 (indication of system time). Each ONU measures transmission time elapsed (step 203, fig.8) and determines whether it is a time assigned by the OLT to transmit data to the OLT (synchronizing with current system time (claims 1 and 23); transmitting data at intervals synchronized by the the current system time) (claims 14, 19, 25, 27). See fig.8, col.3, paragraph 32 & col.2, paragraph 24).

Therefore, it would have been obvious to one ordinary skilled in the art to substitute the DCA 20 of the Carley by having an ONU of Song et al. in order to transmit network data as required by current system time to an OLT and stored the received network data in order to determine the status or network performance such as network traffic, packet loss, history of network performance.

Regarding claims 2, 20 and 26, as explained in the rejection of claim 1, Carley further discloses a processing server 55 receiving a request for network performance data, transmitting performance data (receiving from a management system, a request for network data, and transmitting portion of stored network data col.10, lines 45-60)

Regarding claims 3, as explained in the rejection of claim 1, the data collection agents 20 can be ONU when used in PON network 25.

Regarding claims 10, 18, 24 and 28, Carley discloses the method of claim 1, further comprising maintaining a flag indicative of a validity of the received network data (fig.1 discloses at block 132 which compares analyzed performance data with other previous performance data in the past to determine whether the network traffic is “in control” or “out control” at block 134, col.9, lines 20-25, & col.12, lines 25-45 & col.14, lines 20-40).

Regarding claims 5, 6, 7, 15 and 22, Carley discloses the stored network data includes a plurality of bins (performance repository 40 is a data base, therefore, including a plurality of bins, col.10, lines 38-42); the network data is collected and received at 15-minute intervals (DCA 20 is configured to test performance data once per minute or preferably at evenly spaced intervals, therefore, can be modified to be collected and received at 15-minute intervals, col.9, line 67 to col.10, line 10); and the stored network data includes at least one daily counter (data repository 40 retains data provided to it in a predetermined period such as 3 months, therefore, can be modified to store data and update daily, col.11, lines 10-15).

Regarding claims 4 and 17, Carley discloses the method of claim 1, further comprising: receiving a request to reset network data associated with the ONU; and deleting at least a portion of the stored network data (data collected by DCA 20 remains in data base 40 until a user request 72 is initiated by web browser 70. This means a user may repeatedly transmit requests to DCA 20 which updates the contents of data base 40, col.10, lines 50-60).

Allowable Subject Matter

Claims 8 and 9 are allowed over prior art. The reason for allowance has been addressed in previous Action on 5/13/05.

Response to Arguments

Applicant's arguments with respect to claims 1-7, 10-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dudziak et al. (Pat. 6,470,032 B2) discloses System and method for synchronizing Telecom-related clocks in Ethernet-based in a PON.

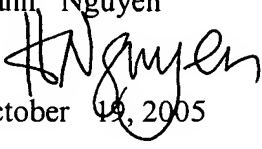
Quayle (Pat. 6,262,997 B1) discloses Synchronization in digital Communications networks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chieh Fan, can be reached on 571 272 3042. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hanh Nguyen


October 19, 2005

**HANH NGUYEN
PRIMARY EXAMINER**